

T-0168.1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:**2020 MCGOWEN, L.L.C.,****Debtor****CASE NO. 17-32788-H2-11****Chapter 11**

**KAVAC HOLDING COMPANY,
L.L.C., 2020 MCGOWEN, L.L.C. et al.,**
Plaintiffs**VS.****ADVERSARY NO. _____**
**PAULL & PARTNERS, L.L.C.,
STALLION FUNDING, L.L.C.,
STALLION TEXAS REAL ESTATE
FUND, L.L.C., AUSTERRA STABLE
GROWTH FUND, L.P., EQUITY
TRUST COMPANY, VINCE BALAGIA,
KENNETH HOLLINS, KRISTI A.
SLAUGHTER, BENJAMIN K.
WILLIAMS AND BEN WILLIAMS,
P.L.L.C. et al.,**
Defendants

NOTICE OF REMOVAL

Stallion Funding, L.L.C., Stallion Texas Real Estate Fund, L.L.C., Austerra Stable Growth Fund, L.P., Equity Trust Company, Vince Balagia, Kenneth Hollins, Kristi A. Slaughter, Benjamin K. Williams and Ben Williams, P.L.L.C. (collectively "Defendants"), file this their NOTICE OF REMOVAL, and would show the following:

1. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1334 and 1452(a), Fed. R. Bank. Pro. 9027(a)(1) and 28 U.S.C. § 157(a); In Re: Order of Reference to Bankruptcy Judges, General Order 2012-6 (S.D. Tex. May, 24, 2012).

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Background, Parties

2. 2020 McGowen, L.L.C. (“Debtor”), filed a Voluntary Chapter 7 Bankruptcy Petition on May 1, 2017. [Doc. 1] The Debtor filed a Motion to Convert From Chapter 7 Case to Chapter 11 on May 25, 2017. The case was converted to Chapter 11 by Order entered August 9, 2017. [Doc.21]

3. On January 31, 2018, the Debtor and 832 Yale, L.L.C.¹ commenced a civil action in state court, Case No. 2016-64847, styled *KAVAC Holding Company, L.L.C. et al. vs. Paull & Partners, L.L.C. et al.*, in the 190th District Court, Harris County, Texas. (“State Court Litigation”) The State Court Litigation was initiated by the Debtor on January 31, 2018, in an existing pending state court lawsuit by adding Debtor 2020 McGowen, L.L.C. as a party-Plaintiff, and adding Defendants, and each of them, as party-Defendants to the suit by “PLAINTIFFS’ FOURTH AMENDED PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND REQUEST FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF.”

Legal, Factual Basis for Removal

4. The State Court Litigation is removable under 28 U.S.C. §§ 1334 and 1452(a), Fed. R. Bank. Pro. 9027(a)(1) and 28 U.S.C. § 157(a); In Re: Order of Reference to Bankruptcy Judges, General Order 2012-6 (S.D. Tex. May, 24, 2012).

5. The Debtor is one of the Plaintiffs in the State Court Litigation suing Defendants for (i) breach of contract, (ii) fraud, (iii) lender liability/breach of fiduciary duty, (iv) negligent misrepresentation, (v) conversion, (vi) money had and received, (vii) trespass, (viii) usury, and (ix) accounting.

6. The Debtor was the maker of three promissory notes payable to, among other

¹ 832 Yale, L.L.C. also has pending its bankruptcy case having filed a Voluntary Chapter 7 Bankruptcy Petition on May 1, 2017, in Case No.17-32790-H2-7, In the U.S. Bankruptcy Court, Southern District of Texas, Houston Division.

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lenders not named as parties in the State Court Litigation, Stallion Funding, L.L.C., Stallion Texas Real Estate Fund, L.L.C., Austerra Stable Growth Fund, L.P., Equity Trust Company and Kenneth Hollins (who, together with Vince Balagia, the managing member of both Stallion Funding, L.L.C. and Stallion Texas Real Estate Fund, L.L.C., are referred to collectively as the “Lender Defendants”), which were utilized by the Debtor in the purchase and improvement of three tracts of land owned by the Debtor, and which are now all property of the Debtor’s bankruptcy estate, with the Lender Defendants holding deed of trust liens on the properties. The factual allegations of the Debtor against Defendants and which additionally support this Removal are set forth in ¶¶ 147-171 in the State Court Litigation Petition, incorporated here by reference. The Debtor seeks damages against Defendants ‘in excess of \$1,000,000.00’ together with temporary and permanent injunctive relief relating to the foreclosure and sale of the three properties of the bankruptcy estate by the Lender Defendants.

7. Additionally, Debtor’s State Court Litigation attempts to adjust the debtor-creditor relationship between the Debtor and the Lender Defendants because the Lender Defendants have filed Proofs of Claim in Debtor’s bankruptcy proceedings and the outcome of the State Court Litigation would affect those claims.

Core Proceedings

8. The claims and issues made by Debtor in the State Court Litigation are core matters pursuant to 11 U.S.C. ¶¶ 363, 541 and 542, and 28 U.S.C. ¶157(b)(2)(A), ¶157(b)(2)(B), ¶157(b)(2)(K) and ¶157(b)(2)(O).

9. If for any reason this matter of the State Court Litigation is determined to be non-core, the Defendants, and each of them, consent to the entry of final orders or judgment by the Bankruptcy Court. *see* Fed. R. Bank. Pro. 9027 and LBR 9027-2.

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Removal Timely

10. This Notice of Removal is timely under 28 U.S. C. ¶1446 and Fed. Bank. R. Pro. 9027(a)(3) because it is filed within 30 days after receipt by Defendants of the initial pleading setting forth the for cause of action being removed, same being February 1, 2018.

Misc. Procedural Matters

11. In compliance with Fed. R. Bank. Pro. 9027 and LBR 9027-1, true and correct copies of the following documents are attached to the INDEX OF DOCUMENTS AND ITEMS are filed contemporaneously with this Notice and listed as follows:

- (i) The live pleadings in the State Court Litigation.
- (ii) All relevant Orders entered and signed by the presiding State Court Judge.
- (iii) A list of all names and addresses of the parties.
- (iv) A list of the name, address, telephone no. and email address of the counsel for each party.

12. The Defendants, after filing this Notice of Removal, shall promptly file a file-stamped copy of the Notice with the clerk of the court from which the cause of action is removed as required by Fed. R. Bank. Pro. 9027(a)(1)(c).

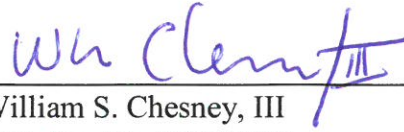
13. As provided by Fed. R. Bank. Pro 9027(b), the Defendants shall promptly serve a copy of this Notice of Removal on all parties to the removed cause of action, *and who shall proceed no further in the State Court Litigation unless and until the cause of action is remanded as required by Fed. R. Bank. Pro. 9027(c).*

SIGNED this 22nd day of February, 2018.

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Respectfully submitted,

**FRANK, ELMORE, LIEVENS,
CHESNEY & TURET, L.L.P.**



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**ATTORNEYS FOR STALLION FUNDING,
L.L.C. ET AL.**

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CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing **Notice of Removal** has been forwarded to the persons and attorneys by **ECF** and/or facsimile and state of Texas eService to:

Via ECF

Larry A. Vick
Attorney at Law
10497 Town & Country Way, Ste. 700
Houston, Texas 77024

Via ECF

Johnie J. Patterson
Walker and Patterson, P.C.
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Houston, Texas 77092

Via ECF

Hector Duran
U.S. Trustee's Office
515 Rusk, Ste. 3516
Houston, Texas 77002

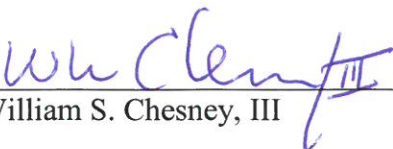
Via fax 713.658.2553 and state of Texas eService

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SIGNED this 22nd day of February, 2018.



William S. Chesney, III